IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 6 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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STATE OFGUJ

Versus

DURLABHBHAI P PATEL

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Appearance:

Ms B.R. Gajjar, APP, for State

Mr AD SHAH for

Respondent No. 1, 2, 3, 4, 5

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CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 07/04/2000

CAV JUDGEMENT

Ms. B.R. Gajjar ld. Addl. PP for petitioner

Mr. A.D. Shah, ld. Advocate for opponents

#. This is a Criminal Revision Application under Section 397 r.w. Section 401(1) Cr.P.C. 1973, (Cr.P.C. in short) filed by the State of Gujarat challenging the correctness, legality and propriety of the order dated 12-10-1990 passed below List (Exh. 53) in Special Corruption Case No. 20 of 1988, which is still pending on the file of the learned Special Judge, appointed under the Prevention of Corruption Act, 1947, (which will be referred to hereinafter as the Act for brevity and convenience).

#. Here, in this Criminal Revision Application, the Revision petitioner is the State of Gujarat which is a Prosecution and present revision - opponents are the accused before the Court of Special Judge in Special Corruption Case No. 20 of 1988 and therefore for convenience now parties will be referred to hereinafter as the Prosecution and accused, respectively.

#. To understand the grounds of attack for challenging the order dated 12-10-1990 passed below List (Exh. 53) in Special Corruption Case No. 20 of 1988, it would be in the fitness of things to know the facts and circumstances of the case under which this Criminal Revision Application has been preferred to this Court.
#. One complainant Shri Dineshchandra Chimanlal of Ahmedabad lodged his complaint (Exh. 20) in A.C.B. Police Station, Ahmedabad City, Ahmedabad on 29-11-1985. As per his complaint it is his case in brief that present Revision Opponents were public servants as defined under Section 2 of the Act and they were serving as Government employees in the Branch of Additional Chitnis, Collector Office, Ahmedabad and they were attending the work with regard to direct recruitment of Class III Government servants. The complainant who was first appointed as a Clerk in the office of the Gujarat State Law Commission in the year 1975, was relieved on that office being closed. As he was relieved from that office, he was absorbed in the office of the Chief Inspector, Court Fees, Gujarat State, Ahmedabad and he was posted as Typist in that office. Thereafter he was required to appear for typing test to be held by the Collector, Ahmedabad for the purpose of confirmation in the service. Accordingly, he made an application to appear at the typing test. It is the case of the complainant that accused No. 4 Mr. Valani came to office in which the complaint was performing his duties as Typist. During his talk with Mr. Valani, complainant informed Mr. Valani that his typing speed was not satisfactory and that he had to appear for such test after putting in 11 years of service. Mr. Valani asked complainant to

contact him in Collector office.

#. In continuation of that talk with Mr. Valani complainant went to the office of the Collector, Ahmedabad he contacted the persons working in branch of Additional Chitnis who were entrusted with the work relating to direct recruitments. He met accused No.1 to 4 and accused no.2 who was the Dy. Mamlatdar. They all informed complainant that he should meet them after typing test was over.

#. On 6-11-1985, the complainant appeared at typing test and on that date at about 5.15 p.m. accused no. 1 Shri D.P. Patel who was working as Clerk in recruitment branch of office of the Collector, Ahmedabad, met complainat in examination hall in Gujarat College, Ahmedabad. Accused No.1 asked complainant to meet him at about 8.00 p.m. on next day.

#. On 7-11-1985 at about 8.00 p.m., complainant went to office of Collector and contacted Shri D.P. Patel (Accused No.1) and at that time other accused Nos. 2 to 4 were present. It is the case of the complainant that accused No.2 who was a Deputy Mamlatdar asked complainant to pay an amount as may be asked to pay, by accused No.1. Accused No.4 and 3 asked complainant to give such an amount so that amount of equal share may come to each accused.

#. Thereafter, on 26-11-1985 at about 8.00 a.m. accused no.4 Mr. Valani came to residence of complainant and told complainant that his answer book of typing test would be examined on that day and if he wanted to pass in that examination he should pay Rs.4000/- to Shri D.P. Patel (accused No.1) and complainant should contact accused No.1 Shri D.P. patel at about 11.00 a.m. by taking with him Rs.4000/-.

#. On that day at about 11.00 a.m. the complainant went to Collector's office and met accused No.1 Shri D.P. Patel. The complainant repeated the talk which he had with Mr. Valani in the morning at about8.00 a.m. to Shri D.P. Patel. Complainant told Shri D.P.patel that he could not manage for the amount and that he would be able to manage for the amount by Thursday. Thereupon Shri D.P.Patel asked complainant to pay Rs.4000/- by Sunday and further told him that his work would be done. Thereafter complainant went to his home and on the next day he did not go to Shri D.P.Patel.

##. On 19-11-1985 at about 12.00 p.m. he went to the

office of the A.C.B. Ahmedabad and informed the Police Inspector that as per talk he would go to accused to pay Rs.4000/at 5.00 p.m. in the evening. Complainant lodged his complaint and thereafter Police Inspector thought it fit to proceed further in connection with complaint lodged by the complainant. The complainant as directed by the Police Inspector went to office of A.C.B. Ahmedabad at about 15.45 hours by taking with him an amount of Rs.4000/-. The Police Inspector drew a preliminary panchnama in presence of panch witnesses in office of A.C.B. during the period between 15.45 and 16.20 hours.

##. Thereafter the Police Inspector, A.C.B. in company of two panch witnesses, complainant and other police officers went to office of the Collector, Ahmedabad and trap was arranged and during the trap Rs.4000/- were accepted by Shri Patel accused No.1 from complainant and thereafter necessary experiment of ultraviolet lamp and other formalities were done in the Branch of Additional Chitnis, Collector Office, Ahmedabad and Rs.4000/- were seized from the drawer of the accused No.1 and thereafter a panchnama was completed at about 21.30 hours. Thereafter the complaint which was given in the morning was registered as C.R. No. 18 of 1985 in A.C.B. police Station. The case which was registered on the basis of that complaint was investigated by the Police Inspector, A.C.B. and ultimately the Police Inspector ACB Police Station, filed a chargesheet in the Court of the Special Judge Ahmedabad on 16-8-1988 and that charge sheet came to be registered as Special Corruption Case No. 20 of 1988.

##. On or about 16-12-1988, accused No. 5 submitted one application Exh. 4 requesting the Court of Special Judge to discharge him from the case and after hearing both the parties the learned Special Judge by passing the order dated 3-4-1989 below application Exh. 4 discharged accused No.3. Thereafter, the learned Special Judge framed a charge Exh. 7 on 3-4-1989. He started to record evidence of witnesses of prosecution on and from 9-7-1990. He could examine in all 3 prosecution witnesses till 28.9.1990. It seems from the record that on 28-9-1990 accused No.1 gave one application Exh. 50 requesting the trial court to pass an appropriate order directing the Investigating Officer to produce the answer books of about 9 candidates who appeared at typing test examination and which were examined by witness Abraham Thomas P.W.3. The learned Judge of the trial court directed the prosecution to produce the documents referred to, in said Application (exh. 50). On next day

i.e. on 28-9-90, Additional P.P. could not produce the documents as per order passed below Exh. 50 and therefor she sought an adjournment by submitting application (Exh. 51). She again sought an adjournment on 4-10-90 vide (exh. 52). On 10-10-1990 the learned A.PP who appeared in the trial court submitted one List Exh. 53 under Section 294 Cr.P.C. and as per that list Exh. 53, the learned A.P.P. submitted to the trial court that four documents referred to in that list Exh. 53 were being produced in the case. On that day, the learned advocates appearing for accused strongly objected for such production along with list Exh. 53 by putting following endorsement in the margin of list Exh. 53.

"I strongly object to the production of the within mentioned documents as these documents are in no way relevant to the charge levelled against the accused. I therefore submit the following authorities in support of the above objection.

(1) 42 Cr. L.J. 831
(2) 1970 GLR 705

Sd/-(Shirish H. Desai)
Advocate for accused No.2, 3 and 4
10-10-1990

Sd/- (A.D. Shah)
Advocate for accused No.4)"

On that day the learned Judge of the trial court passed an order that the said list Exh. 53 should be kept for hearing on 12-10-1990. On 12-10-1990 the learned Judge of the Trial court heard the learned Addl. PP for the State and learned advocates for the accused in detail at length and ultimately he, by passing an exhaustive order giving reasons, rejected the said List Exh. 53.

##. Being aggrieved against and dissatisfied with said order of rejection passed below List Exh. 53, the State Government i.e. Prosecution has preferred this Criminal Revision Application challenging the correctness legality and propriety of the said order.

##. I have heard Ms. B.R.Gajjar learned APP for the Revision Petitioner and Shri A.D.Shah, learned Advocate for the Revision - Opponets. I have also gone through the R&P of the case which has been called for from the trial court.

##. Learned A.P.P. has submitted to this Court that

looking to order which is challenged in this Revision Application it appears that the learned Judge seems to have rejected that application on the grounds that copies were not given to accused prior to making of the application exh.. 53 and documents which were sought to be produced with list Exh. 53 were in nature of additional evidence. She has further argued that the learned Judge of the trial court seems to have rejected the said application on the ground that provisions of Section 294 Cr.P.C. were not applicable to said application. She has read the text of Section 294 Cr. P.C. before this Court and then argued that it is not mentioned that during the course of trial no other documents can be produced. As per her arguments during the course of trial such type of production of additional documents can be made. She has further argued that the prosecution has complied with the provisions of Section 294 Cr.PC for making such production of four documents. She has further argued that authority cited by the learned advocates for the accused in endorsement of objection in the margin of Exh. 53 are not applicable because that authority pertains to Section 94 of Criminal Procedure Code 1898 (It is equivalent to Section 91 of Cr. P.C. 1973). She has further argued that looking to provisions of Section 294 Cr.P.C. relevancy of document is not to be seen at the time of production. As per section 294 Cr.P.C opponent party may admit or deny the document produced with list. He cannot object at the stage of production of document. She has further argued that question of relevancy can be decided at the time of actual tendering of that document in evidence during the trial. She has further argued that Section 294 Cr. P.C. does not prohibit the prosecution from producing the documents during trial. She has argued that prosecution by producing documents with list (Exh. 53) wants to show the conduct of the accused because accused are in the habit of involving themselves in such corrupt practice for which charge has been framed. She has cited one authority of AIR 1980 SC 326.

##. Shri A.D.Shah learned advocate for the revision Opponents has resisted this Criminal Revision Petition on two counts (1) that this revision petition is not maintainable because order passed below List Exh. 53 is in nature of interlocutory order. The order passed by the learned Judge below Exh. 53 is such that it does not give any finality to the proceeding and therefore in view of Section 397(2) Cr.P.C. the powers of revision conferred by subsection (1) cannot be exercised by the Revisional Court in relation to any interlocutory order passed in any appeal, enquiry, trial or other proceeding.

Shri A.D. Shah has further argued that the learned Judge of the Trial court has already framed the charge against accused No.1 to 4. The prosecution has already examined three witnesses in the case and during the midst of the trial the prosecution submitted list exh. 53 with which prosecution wants to produce four documents.

##. It may be noted that the learned A.P.P before the trial Court has not stated any ground or reason for producing that documents on the list Exh. 53. The learned Ap.P. has submitted a list Exh. 53 simplicitor as per provisions of Section 294 Cr.P.C. r.w. para 161 of Chapter VI of the Gujarat High Court manual 1997.

##. Shri Shah has argued that by rejecting application exh. 53 the learned Judge of the Trial Court disallowed the production of the documents, which were sought to be produced and therefore that order of rejection is not form of firnal order, because no finality has been arrived at in the trial. By rejecting production list exh. 53, the trial court has not come to any final conclusion of acquittal or conviction or discharge of the accused and therefore prima facie it appears that order which is challenged in this Criminal Revision Application is an interlocutory order and as per section 397(2) Cr.P.C. no revision can be entertained to challenge such type of interlocutory order. To this submission there is no reply from the learned APP. This court is fully satisfied with the arguments of Shri Shah that order challenged in this Criminal Revision Application is an interlocutory order and revision can lie against interlocutory order.

##. Second contention taken up by Shri Shah the Learned Advocate for accused for objection to such documents being produced is to the effect that documents attached with list are not relevant to the case and therefore as per his arguments in view of Section 5 of the Indian Evidence Act prosecution should not be allowed even to produce the documents which are not relevant to the case. He has argued that for a moment if it is believed that if prosecution is permitted to produce the documents then automatically that documents will not be treated as evidence in the case because that documents are required to be proved in accordance with law but by producing such docmuments, documents will remain on record and if that documents are not relevant then that documents will be unknowingly or unconsciously noticed with unawareness by the court which may prejudice the accused in their defence.

##. Mr A.D. Shah, learned advocate for the revision opponents has argued that the documents which are sought to be produced with list exh.53 are not relevant to the case. He has further argued that the evidence should be relevant to the fact in issue. For this he has referred to Section 5 of the Indian Evidence Act. As per Section 5 of the Indian Evidence Act, evidence may be given in any suit or proceeding of the existence or non existence of every fact in issue and of such other facts as are hereinafter declared to be relevant and of no others. As this is a criminal matter explanation below Section 5 of the Indian Evidence Act is not applicable to the present Criminal Revision Application. Shri A.D.Shah has vehemently argued that in this case looking to the charge exh.7 framed against accused "fact in issue" is very simple in nature. As per charge exh.7, on or about 26th November 1985 accused no.1 being a government servant demanded a bribe of Rs.4,000/- from the complainant who appeared at typing test examination with an assurance that he would be declared pass in that examination and in continuation of that demand, accused no.1 accepted an amount of Rs.4,000/- as bribe from the complainant and in that commission of offence the accused abetted main accused no.1. Shri A.D. Shah has argued that the documents which are produced with exh.53 are not relevant to the fact in issue which is reflected in charge exh.7. He has further argued that as observed by the learned Judge of the trial court in para 6 of the impugned order that prosecution wants to show the conduct of the accused vis-a-vis the present offence with the help of documentary evidence sought to be produced with the said application exh.53. The learned Judge of the trial court has observed that the purpose for which the documentary evidence is sought to be produced may be relevant for the prosecution for any other purpose but would not be equivalent to its being relevant to the fact or facts in issue in the case.

##. To distinguish the "relevancy" and the "admissibility of the documents," Shri A.D. Shah has cited an authority of RAM BIHARI YADAV v. STATE OF BIHAR reported in AIR 1998 SC 1850. In this case, the Honourable Supreme Court has observed as follows:-

> "The law relating to dying declaration, the relevancy, admissibility and its probative value is fairly settled. More often the expressions `relevancy and admissibility' are used as synonyms but their legal implications are distinct and different for more often than not facts which are relevant may not be admissible,

for example, communication made by spouse during marriage or between an Advocate and his client though relevant are not admissible; so also facts which are admissible may not be relevant, for example, questions permitted to be put in cross examination to test the veracity or impeach the credit of witness, though not relevant are admissible. The probative value of the evidence is the weight to be given to it which has to be judged having regard to the facts and circumstances of each case."

##. Shri A.D. Shah has further argued that the prosecution has not stated the purpose for which the documents are sought to be produced. It appears that during the course of the arguments, the learned APP stated before the learned Judge of the trial Court that the prosecution wanted to show the conduct of the accused. It is not made clear as to what type of conduct the prosecution wanted to show to the Court. The documents which are sought to be produced with list exh.53 are relating to some other candidates who appeared at the typing test examination. It is not made clear by the learned APP before this Court as to whether statements of those candidates whose application forms are sought to be produced have been recorded or not. When the charge exh.7 is very limited for the purpose of complainant only, then, in no case it can be said that the documents which are sought to be produced with list exh.53 are relevant in connection with the fact in issue of this case.

##. Shri A.D. Shah, the learned advocate for the Revision Opponents has cited the following two authorities on the point of relevancy of the documents to be considered before allowing production of that document:-

(i) Hussenbhoy Abdulbhoy Lalji v. Rashid B. Vershi
42 Cr.L.J. 1941 page 831. In that case an application for production of documents under Section 94 of the Criminal Procedure COde 1898 was given. Section 94 of old Criminal Procedure Code 1898 is equivalent to Section 91 of the new Criminal Procedure Code, 1973. As per Section 91(1) of the Criminal Procedure Code, 1973, whenever any Court or any officer in-charge of a Police Station considers the production of any document or other thing is necessary or desirable for the purpose of any investigation, inquiry or

trial or other proceeding under Code or by or before such Court or Officer, such COurt may issue a summons or such Officer a written order to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it or to produce it at the time and place stated in the summons or order. Therefore, if a party gives an application u/s 91 of the Criminal Procedure Code to Court with a request to issue witness summons directing that witness to produce certain documents then the Court can issue witness summons accordingly. As per this first authority cited by Shri A.D. Shah, the Court is bound to consider whether there is a prima facie case for supposing that the documents are relevant. If he thinks that the said documents are relevant, then, he can order production. Therefore, before passing any order u/s 94 of the Cr.P.C.1898 it is the duty of the Court to apply its mind and consider whether the documents which are sought to be produced through a witness with the help of Court process are in fact relevant or not and therefore same principle will be applicable to the present case wherein prosecution straightway wants to produce documents with list exh.53.

Admittedly, the production which is sought to be made is belated production because the copies of those documents were not supplied to the accused before application exh.53 was presented to the Court and therefore permission of the Court was very much necessary for such an additional evidence sought to be produced with list exh.53.

(ii) State of Gujarat v. M/s New Swadeshi Mills 1970 (2) GLR 705. This authority is also with regard to production of documents through the witness by taking help of the Court process u/s 94 of Cr.P.C 1898. It has been held in para 11 of this second authority that the Court has to consider in the first instance that the documents sought to be produced as set out in the application have a general bearing for the purpose of investigation of the charges levelled against the accused and that that general bearing would mean that the COurt has to be satisfied that they are bothnecessary and desirable for that purpose, as required under Section 94 of the Cr.PC 1898.

This after bearing the prosecuting authorities the Court has to find that all or any of those documents and records etc. are essential to be taken out for that purpose. It has further to apply its mind whether all or any of them are relevant for the purpose of investigation of the case. That relevancy need not be as is considered under enquriy or trial before a Court in respect of any case already filed but it has to be determined keeping in mind the allegations made against the accused in the complaint or even in relation to other evidence already collected by the prosecuting agencies in respect of offences with which the opponents are sought to be charged.

Here in the present case on hand the charge is already framed. Three witnesses are already examined by the prosecution and in the midst of the trial, during the recording of the evidence of the witnesses, the prosecution submitted list exh.53 without assigning any ground/reason for documents sought to be produced with list exh.53.

##. The learned judge of the trial COurt has in his speaking order comes to a conclusion that the documents sought to be produced are not relevant in any manner to the fact in issue which is reflected in charge exh.7.

##. From para 9 of the impugned order it appears that the learned APP before the trial Court submitted to the learned Judge of the trial Court that by producing the documents exh.53 prosecution wants to establish the conduct of the accused in the light of the documentary evidence sought to be produced and further to show that the accused, more particularly, accused nos.1 and 2 are habituated of indulging into such corrupt practices. It may be noted that on reading charge exh.7, we do not find any charge with regard to contravention of Section 5(1)(a) or (b) of the Prevention of Corruption Act, 1947. Section 5(1)(a)&(b) of the Act speaks for criminal misconduct of a public servant alleging that he is habitually accepting or obtaining gratification as the motive or reward and therefore Section 5(1)(a) and (b) of the Act is related to past conduct of accused nos.1 and 2 and that past conduct should be such that in past he had accepted such type of bribes from other persons. In the present case no such charge is framed.

##. Shri A.D. Shah has argued that when there is no charge framed against the accused for contravention of

either Section 5(1)(a) or 5(1)(b) of the Act, documents cannot be said to be relevant to the fact in issue of the case. He has further argued that for a moment if it is believed that accused nos.1 and 2 are habituated to accept such type of bribes from other persons then by mere tendering the documents to prove that fact is not enough because the sanctioning authority who has accorded the sanction u/s 6 of the Act has not accorded the sanction for offences for contravention u/s 5(1)(a) and (b) of the Act and therefore also the question does not arise for prosecution to establish the fact with regard to habituality of the accused indulging in such type of corrupt practices.

##. It appears from the list exh.53 below which the learned Judge of the trial Court has passed an order which is challenged in the present Criminal Revision Application that the State Government wants to do a certain thing by bringing on record the documents through the learned APP and that thing of requiring the production of documents can only be made by Investigating Officer in exercise of his powers u/s 173 (8) of Cr.P.C. It has been observed that in case of State of Bihar v. J.A.C. Saldanna reported in AIR 1980 SC 326 that it is an undisputed dictum of law that when a Statute requires a thing to be done in a certain manner it shall be done in that manner alone and the Court would not expect it being done in some other manner.

##. If really prosecution wants to bring on record an additional evidence of documents which are sought to be produced with list exh.53, the Investigating Officer may, in exercise of powers u/s 173(8) of the Criminal Procedure Code, 1973, collect the additional evidence, and then he may produce that additional evidence along with his further report (Additional Chargesheet) u/s 173 (2) of Cr.P.C. to the Court. Instead of taking recourse to provisions of Section 173(8) of the Cr.P.C. 1973, the prosecution has adopted another method which is not recognised by law by producing the documents straightway with list exh.53. Admittedly, in this type of cases, the Special Judge appointed under the Act has to follow the procedure laid down in Part-A of Chapter 19 of Cr.P.C. and as per Section 238 of Cr.P.C. when in any warrant case instituted on a police report, the accused appears or is brought before a magistrate at the commencement of trial, the magistrate shall satisfy himself that he has complied with the provisions of Section 207 of Cr.PC. 1973 Section 207 of Cr.PC is in respect of supply of documents on which prosecution relies. Admittedly,

copies of the documents which are sought to be produced with list exh.53 were not given to accused before 10th October 1990. For the first time on 10.10.1990 the learned APP submitted list exh.53 along with four documents. Therefore, it cannot be gainsaid that the documents which are sought to be produced with list exh.53 are the documents in nature of additional evidence and when additional evidence is required to be produced, permission of the COurt is necessary and at the time of granting such permission, the learned Judge has to apply his mind considering the nature of the documents and charge framed and to decide as to whether the documents are relevant or not. Here in this case in no manner the documents are relevant to the fact in issue of the case.

##. Thus, on two counts this Criminal Revision Application fails. One that the order which is challenged in the revision application is an interlocutory order and as per Section 397 (2) of Cr.P.C. it is barred for preferring a revision against the interlocutory order and the second that the documents which are sought to be produced with list exh.53 are not relevant to the fact in issue of the case. Therefore, the learned judge of the trial court has passed the impugned order rejecting the application exh.53 within four corners of law. The order cannot be said to be incorrect or illegal. The question of propriety of the order does not arise as the order in revision is challenged only on the ground that it is incorrect or illegal. Under the circumstances, when the learned judge of the trial Court has exercised his powers by applying his mind to decide as to whether the documents sought to be produced are relevant, it cannot be said to be any illegal order. Under the circumstances, this Criminal Revision Application fails and accordingly this revision application deserves to be dismissed. Hence this Court orders as follows:-

"This Criminal Revision Application is dismissed.

As the Criminal Case from which the order below list exh.53 is challenged in this revision application is of the year 1988 and is a part heard case, the learned Judge of the trial Court is ordered and directed by this COurt to dispose of Special Corruption Case No.20 of 1988 pending before him within three months from the date of receipt of this order. The learned Judge of the trial COurt is also directed to return original documents sought to be produced with list Exh.53 to learned APP who is incharge of the Court as

soon as R & P of the case is received from the Registry of this COurt. Interim relief of granting stay by order dated 17.1.1991 of this Court is vacated forthwith. The Registry is directed to send R & P of the case along with copy of this order immediately without any delay to the trial Court."

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(mohd)